

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Health Care Committee

BILL: SB 2150

INTRODUCER: Senator Dockery

SUBJECT: Strangulation/Felony Battery

DATE: April 7, 2006

REVISED: 04/19/06

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	<b>Favorable</b>
2.	Munroe	Wilson	HE	<b>Fav/1 amendment</b>
3.			JU	
4.			JA	
5.				
6.				

## Please see last section for Summary of Amendments

- Technical amendments were recommended
- Amendments were recommended
- Significant amendments were recommended

### I. Summary:

Senate Bill 2150 provides that a person commits felony battery, which is a third degree felony, if the person commits the act of strangulation by knowingly or intentionally impeding the normal breathing or circulation of the blood of the other person by applying pressure to the throat or neck or by blocking the nose or mouth of the other person, against the will of the other. The bill provides an affirmative defense to a charge for this particular felony battery, which is that an act constituting strangulation was the result of a legitimate medical procedure.

This bill substantially amends section 784.041 of the Florida Statutes.

### II. Present Situation:

Section 784.03, F.S., provides that the offense of a battery, which is generally a first degree misdemeanor,<sup>1</sup> occurs when a person actually and intentionally touches or strikes another person against the will of the other; or intentionally causes bodily harm to another person.

<sup>1</sup> The maximum penalty for a first degree misdemeanor is a term of imprisonment not exceeding one year. Imprisonment would be in a jail, not in a state prison. (s. 775.082, F.S.)

While battery is generally a first degree misdemeanor, battery is third degree felony<sup>2</sup> if a person who has one prior conviction for battery, aggravated battery, or felony battery commits any second or subsequent battery. The term “conviction” means a determination of guilt that is the result of a plea or a trial, regardless of whether adjudication is withheld or a plea of nolo contendere is entered.

Section 784.041, F.S., provides that a person commits felony battery, a third degree felony, if the person actually and intentionally touches or strikes another person against the will of the other and causes great bodily harm, permanent disability, or permanent disfigurement.

Section 784.045, F.S., provides that a person commit aggravated battery, a second degree felony,<sup>3</sup> if the person:

- In committing battery, intentionally or knowingly causes great bodily harm, permanent disability, or permanent disfigurement;
- In committing battery, uses a deadly weapon; or
- The person who was the victim of the battery was pregnant at the time of the offense and the offender knew or should have known that the victim was pregnant.

Currently, Florida does not have a statute that specifically addresses strangulation as do, for example, North Carolina, Nebraska and Missouri.<sup>4</sup> Nebraska’s statute is the statute most relevant to this analysis. It provides:

§ 28-310.01. Strangulation; penalty; affirmative defense.

(1) A person commits the offense of strangulation if the person knowingly or intentionally impedes the normal breathing or circulation of the blood of another person by applying pressure on the throat or neck of the other person.

(2) Except as provided in subsection (3) of this section, strangulation is a Class IV felony.

(3) Strangulation is a Class III felony if:

(a) The person used or attempted to use a dangerous instrument while committing the offense;

(b) The person caused serious bodily injury to the other person while committing the offense; or

(c) The person has been previously convicted of strangulation.

(4) It is an affirmative defense that an act constituting strangulation was the result of a legitimate medical procedure.

Non-fatal strangulations may not cause visible injuries, and therefore, may end up having to be charged as a simple battery, a first degree misdemeanor, because the prosecutor cannot establish great bodily harm, permanent disability, or permanent disfigurement.

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<sup>2</sup> The maximum penalty for a third degree felony is five years in state prison. (s. 775.082, F.S.)

<sup>3</sup> The maximum penalty for a second-degree felony is fifteen years in state prison. (s. 775.082, F.S.)

<sup>4</sup> See North Carolina State Statute § 14-32.4; State of Nebraska Statutes § 28-310.01; Missouri Revised Statutes § 565.073.

## The Practice of Medicine

Chapter 458, Florida Statutes, governs the regulation of the practice of medicine by the Board of Medicine. Section 458.305, F.S., defines the “practice of medicine” to mean the diagnosis, treatment, operation, or prescription for any human disease, pain, injury, deformity, or other physical or mental condition. The chapter exempts from the medical licensure requirements: other duly licensed health care practitioners acting within their scope of practice authorized by statute, and any person furnishing medical assistance in case of an emergency.<sup>5</sup>

Emergency medical personnel – medical directors, paramedics, and emergency medical technicians – are regulated by the Department of Health.<sup>6</sup> Emergency medical services are performed by emergency medical personnel to provide life saving medical intervention. Some of the procedures involve the insertion of tubes or a mask via the mouth or nose into the patient’s throat or larynx area:

- *Orotracheal Intubation* – an advanced airway procedure whereby a plastic tube is inserted **via the mouth** into the patient’s trachea just past the vocal chords. Once in place, a cuff is inflated to seal off the trachea to allow the emergency medical services personnel to provide artificial ventilation into the patient’s lungs. This procedure can be accomplished while the patient is conscious, or unconscious. If the procedure is performed on a conscious patient, it has the effect of sealing off the patient’s airway to override their inadequate ventilatory efforts with effective ventilatory efforts.
- *Nasotracheal Intubation* – an advanced airway procedure whereby a plastic tube is inserted **via the nose** into the patient’s trachea just past the vocal chords. Once in place, a cuff is inflated to seal off the trachea to allow the emergency medical services personnel to provide artificial ventilation into the patient’s lungs. This procedure can be accomplished while the patient is conscious, or unconscious. If the procedure is performed on a conscious patient, it has the effect of sealing off the patient’s airway to override their inadequate ventilatory efforts with effective ventilatory efforts.
- *Combitube* – an advanced airway procedure whereby a mask with **dual tubes** is passed through the patient’s mouth into either the patient’s trachea, or esophagus. Once in place, the mask is firmly seated against the patient’s face, around the nose and mouth, and artificial ventilation provided through one tube or the other depending on which has the most stable airway placement.
- *Laryngeal Mask Airway* – an advanced airway procedure whereby a mask with **a single tube** is passed through the patient’s mouth into the patient’s esophagus. Once in place, the mask is firmly seated against the patient’s face, around the nose and mouth, and artificial ventilation provided through the mask into the patient’s lungs.
- *Carotid Sinus Massage* – a procedure whereby the emergency medical services provider places her/his fingers **along the patient’s neck**, palpating the carotid artery. The artery is then **depressed** in such a way as to stimulate the barrow receptors located within the carotid artery to slow the patient’s heart rate if the patient’s heart rate is dangerously fast.<sup>7</sup>

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<sup>5</sup> See paragraphs (a) and (e) of subsection (1) of s. 458.303, F.S.

<sup>6</sup> See part II of chapter 401, F.S.

<sup>7</sup> Source: The Florida Association of Counties.

Other emergency medical intervention that may be performed includes: patient positioning during an emergency, the application of direct pressure or pressure dressings in an effort to stop bleeding, the initiation of cardiopulmonary resuscitation, and the completion of airway obstruction relief procedures such as the Heimlich maneuver. In addition to licensed personnel, laypersons may render emergency care or treatment. Florida law provides immunity from civil damages to any person who gratuitously and in good faith provides emergency medical care or treatment under specified circumstances.<sup>8</sup>

### **Medical Consent Law**

Section 766.103, F.S., the Florida Medical Consent Law, provides immunity from civil damages for physicians treating, examining, or operating on patients without the patient's informed consent under non-emergency circumstances, subject to two conditions. The first condition is that the physician attempt to obtain consent from the patient or from a person authorized to give consent on behalf of the patient by applying accepted standards of medical practice among members of the medical profession or community that would be sufficient to give a reasonable person a general understanding of the procedure, acceptable alternative treatments, and the substantial risks and hazards inherent in the proposed treatment that have been recognized by members of the profession. The second condition is that the patient could reasonably be anticipated, under all the surrounding circumstances, to have consented to the treatment had he been advised by the physician as required under the first condition.

### **III. Effect of Proposed Changes:**

Senate Bill 2150 provides that a person commits felony battery, which is a third degree felony, if the person commits the act of strangulation by knowingly or intentionally impeding the normal breathing or circulation of the blood of the other person by applying pressure on the throat or neck or by blocking the nose or mouth of the other person, against the will of the other. The bill provides an affirmative defense to a charge for this particular felony battery, which is that an act constituting strangulation was the result of a legitimate medical procedure.

The offense created by the bill almost mirrors the Nebraska statute previously described. One notable difference is that in the Nebraska statute strangulation does not include knowingly or intentionally impeding the normal breathing or circulation of the blood of the other person by blocking the nose or mouth of the other person.

The bill takes effect on October 1, 2006.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

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<sup>8</sup> See s. 768.13, F.S.

**B. Public Records/Open Meetings Issues:**

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

**C. Trust Funds Restrictions:**

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

**V. Economic Impact and Fiscal Note:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The Criminal Justice Impact Conference estimated the bill would have an indeterminate prison bed impact.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The bill provides that a person commits felony battery, which is a third degree felony, if the person commits the act of strangulation by knowingly or intentionally impeding the normal breathing or circulation of the blood of the other person by applying pressure on the throat or neck or by blocking the nose or mouth of the other person, *against the will of the other*. A number of procedures that are routinely used in the rendering of emergency care and treatment by both laypersons and emergency medical services personnel that are authorized under Florida law would impede the normal breathing or circulation of the blood of another person by applying pressure on the throat or neck or by blocking the nose or mouth of the other person. The use of such procedures when rendering emergency medical care or treatment may expose the person who renders such care to the criminal liability for the offense of strangulation that is created in the bill.

An implied consent is assumed when emergency medical care or treatment is rendered to another person. For purposes of implied consent in the context of the provision of emergency medical care or treatment, it is unclear what “against the will of the other” would mean.



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## VIII. Summary of Amendments:

### **Barcode 954580 by Health Care:**

The amendment removes an affirmative defense to the offense of strangulation that is created in the bill for legitimate medical procedures and creates an exception to the offense for any act of medical diagnosis, treatment, or prescription which is authorized under the laws of this state. With an exception, the burden is on the State to prove that the defendant does not fall within the exception. With an affirmative defense, the defendant has to raise this defense if he or she wants to use it and the initial burden is on the defendant to put forth some evidence to support the defense. Only then does the burden shift to the State to disprove the defense beyond a reasonable doubt. For a discussion of exceptions, see *Hodge v. State*, 2004 WL 432501 (Fla. 4th DCA 2004). For a discussion of affirmative defenses, see *Petrucelli v. State*, 855 So.2d 150 (Fla. 2d DCA 2003).

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This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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